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C-351-829  
Sunset Review  
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November 29, 2004

MEMORANDUM FOR: James J. Jochum  
Assistant Secretary  
for Import Administration

FROM: Ronald K. Lorentzen  
Acting Director, Office of Policy

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Review of  
the Countervailing Duty Order on Hot-Rolled Flat-Rolled Carbon-  
Quality Steel Products from Brazil: Final Results

Summary:

We analyzed the substantive responses of the interested parties in the expedited sunset review of the countervailing duty (“CVD”) order on certain hot-rolled flat-rolled carbon-quality steel products (“hot-rolled steel”) from Brazil. We recommend that you approve the positions we have developed in the *Discussion of the Issues* section of this memorandum for these final results of review. Below is the complete list of the issues in this expedited sunset review for which we received substantive responses by parties:

1. Likelihood of continuation or recurrence of countervailable subsidies
2. Net countervailable subsidy likely to prevail

History of the Order:

On July 19, 1999, the Department of Commerce (“the Department”) published the final determination and suspended the CVD investigation on hot-rolled steel from Brazil. See Suspension of Countervailing Duty Investigation: Hot-rolled Flat-rolled Carbon-Quality from Brazil, 64 FR 38797 (“Suspension Agreement”) and Final Affirmative Countervailing Duty Determination: Hot-rolled Flat-rolled Carbon-Quality from Brazil, (“Final Determination”) 64 FR 38742 (July 19, 1999). In the final affirmative countervailing duty determination, the following programs were found to confer countervailable subsidies:

- 1) Pre-1992 Equity Infusions
- 2) GOB Debt-to-Equity Conversions Provided to COSIPA in 1992 and 1993
- 3) GOB Debt-to-Equity Conversions Provided to CSN in 1992

See Final Determination, 64 FR at 38747-48. The Department determined a CVD rate of 9.67 percent for Usinas Siderurgicas de Minas Gerais and Companhia Siderurgica Paulista (“USIMINAS/COSIPA”)<sup>1</sup>; and 6.35 percent for Companhia Siderurgica Nacional (“CSN”). *Id.* at 38755. The Department determined the all others rate at 7.81 percent ad valorem. *Id.*

On May 3, 2004, the Department initiated a sunset review of the suspended CVD investigation on hot-rolled steel from Brazil pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See Initiation of Five-Year (Sunset) Reviews, 69 FR 24118 (May 3, 2004). The Department received two substantive responses: one response from Ispat Inland, Inc. and its division Ispat Inland Flat Products (collectively “Ispat”); and the second response from Ispat; International Steel Group, Inc.; Gallatin Steel Co.; IPSCO Steel, Inc.; Nucor Corp.; Steel Dynamics, Inc.; and United States Steel Corp. within the applicable deadlines specified in 19 CFR 351.218(d). See Ispat Response (June 2, 2004), and Response of Ispat Inland, Inc.; International Steel Group, Inc.; Gallatin Steel Co.; IPSCO Steel, Inc.; Nucor Corp.; Steel Dynamics, Inc.; and United States Steel Corp (June 2, 2004) (“Collective Response”). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as domestic manufacturers of hot-rolled steel. We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of this order.

On July 28, 2004, the Government of Brazil (“GOB”) sent notice of its desire to terminate the suspended agreement within sixty days in accordance with Article XI.B of the Agreement Suspending the CVD Investigation on hot-rolled steel from Brazil. See Suspension Agreement, 64 FR at 38797; see also Letter to the Honorable Donald Evans from Aluisio G. De Lima-Campos (July 28, 2004). The Department terminated the suspension agreement and issued a CVD order, effective September 26, 2004, reinstating the calculated CVD ad valorem rate for USIMINAS/COSIPA at 9.67 percent, CSN at 6.35 percent, and all others at 7.81 percent. See Agreement Suspending the Countervailing Duty Investigation on Hot-Rolled Flat-Rolled Carbon Quality Steel from Brazil; Termination of Suspension Agreement and Notice of Countervailing Duty Order, 69 FR 56040 (September 17, 2004) and Agreement Suspending the Countervailing Duty Investigation on Hot-Rolled Flat-Rolled Carbon Quality Steel from Brazil; Correction to the Notice of Termination of Suspension Agreement and Notice of Countervailing Duty Order, 69 FR 60614 (October 12, 2004).

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<sup>1</sup>The Department found that USIMINAS owned 49.79 percent of COSIPA during the investigation. See Final Determination, 64 FR at 38744. Accordingly, the Department determined that it is appropriate to treat these two producers as a single company for purposes of this investigation in accordance with section 771(33)(E) of the Act. *Id.*

No administrative or changed circumstances reviews were completed in relation to this order. Thus, the order remains in effect for all known producers and exporters of hot-rolled steel from Brazil.

### Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews and whether any change in the programs which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (“the Commission”) the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the Commission information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (“Subsidies Agreement”).

Below we address the substantive responses of the interested parties.

#### 1. Continuation or Recurrence of a Countervailable Subsidy

##### Interested Parties’ Comments:

The domestic interested parties contend that the benefits from the GOB’s pre-1992 equity infusion programs extend to USIMINAS, COSIPA, and CSN through 2006; the debt-to-equity conversions to COSIPA extend through 2008; and the debt-to-equity conversions to CSN extend through 2007. See Ispat Response at 3 and Collective Response at 4. The domestic interested parties argue that termination of the order would likely lead to a recurrence of subsidies because the 15-year allocation period for the non-recurring subsidy programs that are subject to the suspension have not ended. See Ispat Response at 2 and Collective Response at 4. Citing the Department’s Policy Bulletin, the domestic interested parties state that the Department should determine that the benefit streams of the countervailable programs subject to the suspension agreement continue beyond the end of this sunset review. See Ispat Response at 3 and Collective Response at 4 citing Policies Regarding the Conduct of Five-Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin (“Policy Bulletin”) 63 FR 18871, 18875 (April 16, 1998).

##### Department’s Position:

We found in our final affirmative determination that the GOB provided equity infusions to USIMINAS (1983 through 1988), COSIPA (1983 through 1989 and 1991) and CSN (1983 through 1991). See Final Determination, 64 FR at 38747. With respect to subsidies for which the benefits are allocated over time, such as equity infusions and debt-to-equity conversions, the Department will consider whether the benefit stream is likely to continue after the end of the review, without regard to whether the program that gave rise to the long-term benefit continues to exist. See Policy Bulletin, section III.A.4., 63 FR at 18874. The Department applied a company-specific allocation period of 15 years for non-recurring subsidies based on the average useful life of non-renewable physical assets in this industry, as described in the U.S. Internal Revenue Service depreciation tables. See Final Determination, 64 FR at 38746, 38751. Because this record evidence indicates that these programs will continue to provide benefits from 2006 to 2008, a period beyond this sunset review, we find it likely that countervailable subsidies will continue if this order were revoked.<sup>2</sup>

## 2. Net Countervailable Subsidy Likely to Prevail

### Interested Parties Comments:

The domestic interested parties argue that the countervailing duty rates likely to prevail if the order were revoked should be those determined during the investigation. See Ispat Response at 3 and Collective Response at 6. The domestic interested parties state that the non-recurring subsidies subject to the order have not reached the end of their 15-year allocation period; therefore, the Department should determine that rates for USIMINAS/COSIPA at 9.67 percent, CSN at 6.35 percent, and for all other Brazilian manufacturers at 7.81 percent. See Ispat Response at 4 and Collective Response at 6.

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<sup>2</sup>USIMINAS, COSIPA, and CSN were found to have been partially privatized during the investigation. See Final Determination 64 FR at 38744 and 38745. Since the completion of the investigation, the Department has modified its practice regarding privatizations of state-owned enterprises in the context of countervailing duty investigations and reviews and their effect on the countervailability of allocated pre-privatization subsidies. See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125, 37127 (June 23, 2003) ("Final Modification"). This modification applies to all reviews initiated on or after June 30, 2003, including this sunset review.

In this sunset review, interested parties have not raised the issue of privatization and its possible effect on the countervailability of allocated pre-privatization subsidies. The final modification states that, "The methodology is based on certain rebuttable presumptions, reflecting the conclusions of the Panel and the Appellate Body. The 'baseline presumption' is that non-recurring subsidies can benefit the recipient over a period of time (*i.e.*, allocation period) normally corresponding to the average useful life of the recipient's assets. However, an interested party may rebut this baseline presumption by demonstrating that, during the allocation period, a privatization occurred in which the government sold its ownership of all or substantially all of a company or its assets, retaining no control of the company or its assets, and that the sale was an arm's-length transaction for fair market value." See Final Modification, 68 FR at 37127. Since, in this case, interested parties have neither raised the issue nor submitted information rebutting the baseline presumption, the Department finds that pre-privatization, non-recurring subsidies continue to be countervailable throughout their allocation periods.

### Department's Position:

The Department normally will select a rate from the investigation as the net countervailable subsidy likely to prevail if the order is revoked, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. However, this rate may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate does not take into account a program found to be countervailable in a subsequent administrative review. In such cases, the Department may make adjustments to the investigation rate to reflect intervening changes. In this case, we will report to the Commission the company-specific rates from the investigation because we have no evidence of changes to the subsidy programs previously found to be countervailable.

### Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department will provide information to the Commission the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. The countervailable subsidies in this case, are non-recurring equity infusions and debt-to-equity conversions. No receipt of benefits under these countervailable programs are contingent upon exports or the substitution of domestic over imported goods; therefore, these programs do not fall within the definition of an export subsidy under Article 3 of the Subsidies Agreement. From information on the record, it also does not appear that these programs fall within the definition of a subsidy under Article 6.1.<sup>3</sup>

### Final Results of Review

We determine that benefits from the programs previously determined to be countervailable would likely continue or recur were the order revoked. As a result of this review, including the analysis set forth in our final results, the Department finds that termination of the order would likely lead to continuation or recurrence of a countervailable subsidy at the following rates:

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<u>Manufacturers/Producers/Exporters</u>	<u>Net Countervailable Subsidy (percent)</u>
USIMINAS/COSIPA	9.67

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<sup>3</sup>Further, we note Article 6.1 of the Subsidies Agreement expired effective January 1, 2000.

CSN	6.35
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All Others	7.81
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Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the Final Results of Review in the Federal Register.

AGREE        \_\_\_\_\_X\_\_\_\_\_

DISAGREE    \_\_\_\_\_

**ORIGINAL SIGNED**

\_\_\_\_\_  
James J. Jochum  
Assistant Secretary  
for Import Administration

**11/29/04**

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(Date)